

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Amended Allegation against **WILLIAM L. HILSON, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 201.1** of the CPA Ontario Code of Professional Conduct.

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

William L. Hilson

APPEARANCES:

For the Professional Conduct Committee: Kelvin Kucey, Counsel

For William L. Hilson: Present
Monique Jilesen and Arash Nayerahmadi,
Counsel

Heard: January 18, 2024

Decision and Order effective: January 18, 2024

Release of written reasons: February 16, 2024

REASONS FOR THE DECISION AND ORDER MADE JANUARY 18, 2024

I. OVERVIEW

- [1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made an Amended Allegation of professional misconduct that William L. Hilson ("Hilson" or the "Member"), while acting as the Chief Commercial Officer of a company that was a reporting issuer in the federally regulated cannabis industry (hereafter identified as "Cannabis Co."), failed to maintain the good reputation of the profession and its ability to serve the public interest by failing to take appropriate steps to address the recognition of revenue in the interim financial statements for the third quarter in 2019 of the company (the "Amended Allegation").
- [2] This hearing was held to determine whether the Amended Allegation was established and

whether the conduct breached Rule 201.1 of the *CPA Code of Professional Conduct* (the “Code”).

II. AMENDED ALLEGATION

- [3] The PCC made an Allegation of professional misconduct against the Member on July 24, 2023. On the morning of the hearing, counsel for the PCC provided the Panel with the [Amended Allegation dated January 17, 2024](#).
- [4] The Amended Allegation states that in or about the period April 15, 2019 to October 31, 2022, while acting as the Chief Commercial Officer of Cannabis Co., the Member failed to maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the *Code*.
- [5] Schedule “A” to the Amended Allegation is a Settlement Agreement dated October 20, 2022 between the Member and the Ontario Securities Commission (“OSC Settlement Agreement”) and a Cease-and-Desist Order made by the Securities and Exchange Commission of the United States of America dated October 24, 2022 (“SEC Order”). The OSC Settlement Agreement is attached hereto as Schedule “A” however the SEC Order is not attached as the parties advised that they placed no reliance on the facts contained in that document.
- [6] The parties clarified that the dates set out in paragraph [4] above (April 15, 2019 to October 31, 2022) related to the period commencing with the Member’s appointment as Chief Commercial Officer of Cannabis Co. and the conclusion of the regulatory reviews by the Ontario Securities Commission and the Securities and Exchange Commission. The Member was the Chief Commercial Officer of Cannabis Co. from April 15, 2019 until December 31, 2019.

III. ISSUES

- [7] The Panel identified the following issues arising from the Amended Allegation:
 - A. Did the evidence establish, on a balance of probabilities, the facts on which the Amended Allegation was based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did those facts constitute professional misconduct?

IV. DECISION

- [8] The Panel found that the evidence, namely the facts set out in the OSC Settlement Agreement, established, on a balance of probabilities, the facts set out in the Amended Allegation.
- [9] The Panel was satisfied that the facts set out in the Amended Allegation constituted a breach of Rule 201.1 of the *Code*, and having breached this Rule, the Member committed professional misconduct.

V. REASONS FOR THE DECISION ON MISCONDUCT

[10] The PCC relied wholly on the OSC Settlement Agreement as evidence of the alleged misconduct of the Member. The Member agreed that he was bound by the admissions he made in the OSC Settlement Agreement and that he had breached Rule 201.1 of the *Code*. The relevant portions of the OSC Settlement Agreement (including paragraph numbers) are set out below:

6. Hilson is a Chartered Professional Accountant with a Master's of Science degree in clinical biochemistry. From about September 2016 until April 15, 2019, Hilson acted as CFO for [Cannabis Co.] ([Cannabis Co.] or the Company). From April 15, 2019 to December 31, 2019, Hilson was [Cannabis Co.]'s Chief Commercial Officer.
7. [Cannabis Co.] is a licensed cannabis producer in Canada with international production and distribution across five continents. The Company is listed on the TSX [...] and NASDAQ [...] with a market capitalization of about \$1.19 billion as of August 29, 2022 [.....]
8. In July 2019, while Hilson was [Cannabis Co.]'s Chief Commercial Officer, [Cannabis Co.] entered into an agreement with a third party titled "Contract Manufacturing Agreement" (CMO Agreement) governing the arrangements by which the third party was to provide manufacturing services to [Cannabis Co.], specifically for the manufacture of vape cartridges. Under the CMO Agreement the biomass could be supplied by [Cannabis Co.] or sourced on its behalf. The CMO Agreement stipulated that [Cannabis Co.] retained title and ownership of the biomass at all times.
9. Hilson had input into the terms of the CMO Agreement and was aware of its terms. He made the CMO Agreement available to [Cannabis Co.]'s accounting department for assessment of revenue recognition.
10. In the third quarter of 2019, Hilson played a significant role in a transaction in which [Cannabis Co.] improperly recognized \$3 million in revenue. In that transaction, [Cannabis Co.] entered into a wholesale transaction to sell dried cannabis to the counterparty to the CMO Agreement (the "Q3 Transaction").
11. Hilson negotiated the Q3 Transaction and its payment terms on behalf of [Cannabis Co.].
12. [Cannabis Co.]'s accounting department prepared its quarterly financial statements, which included the assessment of the Q3 Transaction for revenue recognition purposes.
13. In his role as Chief Commercial Officer, Hilson was not required to certify or approve [Cannabis Co.]'s quarterly financial statements. However, on November 8, 2019, Hilson signed an "Internal Control Certification" in connection with the quarterly financial statements and related reported information as of and for the three months ending September 30, 2019. Hilson

confirmed in the signed certification that the interim financial statements were accurate and fairly presented in all material respects [Cannabis Co.]’s financial condition, results of operations, and cash flows as they related to his area of responsibility.

14. The Q3 Transaction did not, in fact, meet the criteria for revenue recognition in accordance with applicable generally accepted accounting principles, in this case International Financial Reporting Standards (IFRS). The standard applicable to revenue recognition for the transaction was IFRS 15, *Revenue from Contracts with Customers*.
15. The Q3 Transaction did not meet the criteria for revenue recognition because it was deemed to be a consignment sale. As a result, [Cannabis Co.] had overstated revenue by approximately \$3 million, overstated cost of sales by approximately \$1.7 million, and overstated realized fair value adjustment on inventory by approximately \$3.3 million in its Consolidated Statements of Operations and Comprehensive Income (Loss), in the interim financial statements for the three and nine months ended September 30, 2019 (the Q3 2019 Interim Financial Statements).
16. Hilson failed to take appropriate steps to address the handling of revenue recognition issues for the Q3 Transaction by [Cannabis Co.], including by not ensuring that an analysis of revenue recognition in respect of the transaction had been prepared and considered by the Company prior to its completion of Q3 2019 Interim Financial Statements.

- [11] In the OSC Settlement Agreement, the Member agreed that he failed to take appropriate steps to address the handling of revenue recognition issues for the Q3 Transaction and that this failure constituted conduct contrary to the public interest.¹
- [12] The Member agreed to the Order set out in the OSC Settlement Agreement², which included a voluntary payment in the amount of \$50,000 to the Commission before the hearing and an order of costs of \$20,000 to the Commission. The Order also prohibited the Member from acting as a director or officer of any reporting issuer for a period of one year from the date of the Order.
- [13] Under Rule 201.1 of the *Code*, a member or firm shall act at all times in a manner which will maintain the good reputation of the profession and serve the public interest. There is a rebuttable presumption that a member or firm has failed to maintain the good reputation of the profession or serve the public interest when the member or firm has been found guilty of violating the provisions of any securities legislation (Rules 201.2 and 102.1(d)).
- [14] The Panel concluded that the OSC Settlement Agreement provided clear and cogent evidence that proved the Amended Allegation on a balance of probabilities and established that the Member breached Rule 201.1 of the *Code*.

¹ OSC Settlement Agreement ¶ 25

² OSC Settlement Agreement ¶ 27-30

VI. DECISION AS TO SANCTION AND COSTS

[15] After considering the joint submission of the parties, the Panel made the following [Order](#).

VII. REASONS FOR DECISION AS TO SANCTION

[16] The purpose of sanctions in a professional discipline matter is to provide specific deterrence to the member who has committed professional misconduct and general deterrence to the members of the profession at large. The sanctions are intended to demonstrate to the public that CPA Ontario is serious about disciplining its members for contraventions of the *Code*, to protect the public and to maintain public confidence in the profession.

[17] During the hearing, the parties came to an agreement about the proposed sanctions and costs, which was presented to the Panel. The parties proposed that the Member's membership in CPA Ontario be suspended for six months and he pay a fine of \$25,000 by July 18, 2024. It was further ordered that a written reprimand would be delivered and the usual publication order would be made by the Discipline Committee.

[18] Where there is a joint submission from the parties about the appropriate sanction, the agreement reached by the parties is entitled to a high level of deference. A joint submission should be adopted unless it is contrary to the public interest and would bring the regulatory process into disrepute because it was beyond the reasonable range of sanction for similar professional misconduct. In the words of Justice Moldaver of the Supreme Court of Canada in the matter of *R. v. Anthony Cook*:

[34] ... a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain. (emphasis added)³

[19] Counsel for the PCC submitted that there was a broad range of CPA Ontario sanctions where members had been found to have breached the terms of the *Ontario Securities Act*. Most of the cases that the PCC referenced resulted in the revocation of membership.⁴ In the matters of [Morton](#), [Bernholtz](#) and [Hoey and Woodcroft](#), however, the members in question were suspended for either three or six months. Based on this caselaw, it was clear that revocation is not the presumptive sanction where CPA Ontario members are found to have breached the *Ontario Securities Act* and that each case will turn on its own facts.

³ *R. v. Anthony-Cook*, 2016 [SCC 43](#) ¶ 34

⁴ [Horsley](#), [Prentice](#), [Sanfelice](#), [Jones](#) and [Grossman](#)

- [20] Counsel for the PCC argued that the joint submission on sanction fell within the range of the sanctions imposed on other members who had been found to have breached the *Ontario Securities Act*.
- [21] Counsel for the Member submitted that the Member was not the Chief Financial Officer of Cannabis Co. or even working in the finance department of Cannabis Co. at the time that the Q3 2019 interim financial statements were prepared. She submitted that this was a single incident, which was a mitigating factor in the determination of the appropriate sanction.
- [22] The Panel accepted the joint submission of the parties with great reluctance. The Member's conduct was egregious and, as set out in the OSC Settlement Agreement, his failure to take appropriate steps to address the recognition of revenue for the Q3 Transaction was contrary to the public interest. The Panel noted that at the time of the misconduct, the cannabis market was highly competitive and unsettled, and so a failure to properly report revenue, particularly an error overstating revenue by \$3 million, may have had a significant impact on the public's trust in this burgeoning industry. The Panel also noted that the OSC Settlement Agreement twice referred to the Member's CPA membership. In the absence of a joint submission, the Panel would have imposed a more significant penalty.
- [23] Notwithstanding the above, the Panel was unable to find that the proposed penalty was so "unhinged" that it would cause reasonably informed members of the public to think that the proper functioning of the CPA Ontario regulatory system had broken down. We understand the importance of promoting certainty in resolution discussions and we accept there are factors relevant to the negotiations of the parties of which the Panel is not apprised.

VIII. COSTS

- [24] With respect to costs, the law is settled that an order against a member for costs with respect to disciplinary proceedings is not a penalty. Costs are intended to indemnify the PCC based on the underlying principle that the profession as a whole should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [25] The PCC requested costs of \$5,000, noting that there had been no investigation because of the reciprocal prosecutions. The Panel reviewed the PCC's Costs Outline and agreed that while the costs requested by the PCC and agreed to by the Member were modest, they were not unreasonable.

DATED this 16th day of February, 2024



Bernard S. Schwartz, FCPA, FCA
Discipline Committee – Deputy Chair

Members of the Panel

Incheol (Charlie) Baek, CPA, CMA

Jim Huang, CPA, CGA

Barbara Ramsay, Public Representative

Independent Legal Counsel

Susan J. Heakes, Barrister & Solicitor